

REGIONAL PLANNING COMMISSION:
PLANNING AND ZONING:

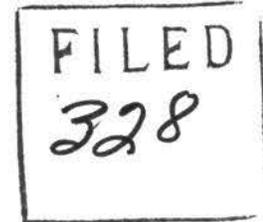
The requirements of notice,
publication and public hear-
ing contained in Section

251.430, RSMo, do not apply to the withdrawal at the end of a
fiscal year of a regional planning commission by a local unit
of such regional planning commission when the commission has
been in existence more than ninety days.

OPINION NO. 328

October 29, 1974

Honorable Dan K. Purdy
Prosecuting Attorney
St. Clair County
Post Office Box 332
Osceola, Missouri 64776



Dear Mr. Purdy:

This opinion is in response to your question asking what
method a local unit must follow to withdraw from a regional
planning commission which has been created under the provisions
of Sections 251.150, RSMo et seq.

The section to which you particularly refer, Section 251.430,
RSMo, provides:

"Within ninety days of the issuance by the
governor of an order creating a regional
planning commission, any local unit of gov-
ernment within the boundaries of such region
may withdraw from the jurisdiction of such
commission by a two-thirds vote of the mem-
bers of the governing body after a public
hearing of which notice shall have been given
not more than three nor less than two weeks
prior thereto by registered mail to the com-
mission and to the public by publication in
a newspaper of general circulation within
the boundaries of such local unit of govern-
ment. A local unit may withdraw from a re-
gional planning commission at the end of any
fiscal year by a two-thirds vote of the mem-
bers of the governing body."

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You also indicate that the situation does not involve withdrawal within ninety days of the issuance by the governor of an order creating the commission and that the question is whether the public hearing, publication and notice provisions contained in the first sentence of the section apply to withdrawal by a local unit at the end of a fiscal year.

We note that Section 30 of Senate Bill No. 14, 73rd General Assembly, Second Extraordinary Session, originally provided:

"Within ninety days of the issuance by the governor of an order creating a regional planning commission, any local unit of government within the boundaries of such region may withdraw from the jurisdiction of such commission by a two-thirds vote of the members of the governing body after a public hearing of which notice shall have been given not more than three nor less than two weeks prior thereto by registered mail to the commission and to the public by publication in a newspaper of general circulation within the boundaries of such local unit of government. A local unit may withdraw from a regional planning commission at the end of any fiscal year by a two-thirds vote of the members of the governing body taken at least six months prior to the effective date of such withdrawal. However, such unit shall be responsible for its allocated share of the contractual obligations of the regional planning commission continuing beyond the effective date of its withdrawal. (Emphasis added).

It therefore appears from the above underscored matter which was deleted before final passage that the bill as originally drafted would have required the vote at least six months prior to the effective date of withdrawal and that such a notice would have been sufficient to apprise all concerned in ample time of the withdrawal of the unit. When the legislature deleted this provision it did not undertake to provide any other requirements with respect to public hearing, notice and publication, and, in view of the plain language of the statute we do not believe that we have the authority to supply such requirements.

There is admittedly some question as to why the legislature did not expressly require some public hearing, notice or publication as it did with respect to the ninety day provision. Although

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such a deficiency may appear to be logically questionable, it does not create an absurd situation or competely unworkable results and therefore we conclude that the language in question must be read to allow the withdrawal of a local unit at the end of any fiscal year by a two-thirds vote of the members of the governing body and that the public hearing, notice and publication requirements contained in the first sentence of such section are not applicable to such withdrawals.

The further question arises as to whether the fiscal year referred to in the statute is the fiscal year of the local unit or of the regional planning commission. We note that Section 251.400, RSMo, refers to the fiscal year of the regional planning commission and provides, in part, as follows:

". . . The budget as prepared by the regional planning commission shall show the proportionate share of each local governmental unit participating in such commission and shall be submitted to each participating local governmental unit at least sixty days prior to the end of the regional planning commission's fiscal year. . . ."

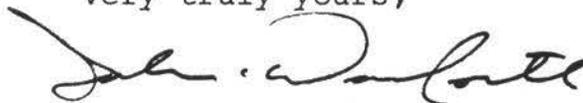
Further, since the context of Section 251.430 appears to focus on the creation and functioning of the regional planning commission we conclude that "fiscal year" as used therein with respect to withdrawal by a local unit means the fiscal year of the commission.

CONCLUSION

It is the opinion of this office that the requirements of notice, publication and public hearing contained in Section 251.430, RSMo, do not apply to the withdrawal at the end of a fiscal year of a regional planning commission by a local unit of such regional planning commission when the commission has been in existence more than ninety days.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General